IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
APPEAL NO.954 OF 2001
IN
TESTAMENTARY SUIT NO.40 OF 1998
IN
PETITION NO.974 OF 1997
ALONGWITH
SUIT NO.3761 OF 1997

Hemlata @ Kanakalata S. Shroff
Plot No.168/B, II floor, Dadar,
Vijay Sadan Co-op. Hsg. Society Ltd.
Dr.Ambedkar Road,
Mumbai 400 014 ..Appellant
(Orig.Defendant No.2)

V/s.

1. Prafulkumar Chintaman Mohandas
of Mumbai Indian Inhabitant, the
sole Executor named in the Will of
the deceased abovenamed, and
residing at Praful Bhavan, Plot
No.130, Khareghat Road, Hindu Colony,
Dadar, Mumbai-400 014.

2. Maheshkumar Chintamani Mohandas
of Raigad, Indian Inhabitant, residing
at Theronda, Post: Chaul, Taluka
Alibag, Dist. Raigad

3. Shantikumar Chintamani Mohandas
of Raigad, Indian Inhabitant, residing
at Mukhrichi Ganpati Gally,
Tekalkarali, Post Chowl, Taluka
Alibag, Dist. Raigad ...Respondents
(No.1 Org.Plff No.1 &
No.2 Org.Deft.No.3)

Mr.P.G.Lad, adv. for the Appellant.

Mr.C.N.Chavan, adv. for the Respondent No.1.

WITH
APPEAL NO.74 OF 2002
IN
SUIT NO.3761 OF 1997

Maheshkumar Chintamani Mohandas

Indian Inhabitant,
Residing at Reodanda Post-Chawl,
Taluka-Alibag, District-Raigad ..Appellant
(Orig.Defendant No.1)

V/s.

1. Shri Prafulkumar Chintamani
Mohandas, of Mumbai, Indian
Inhabitant, R/at Praful Bhavan,
Plot No.130, Khareghat Road,
Hindu Colony, Dadar,
Mumbai-400 014. ...Respondent
(Orig.Plaintiff)

2. Mrs.Hemlata @ Kanaklata
Shivhar Shroff, Plot No.168/B,
IInd floor, Hindu Colony, Dadar,
Mumbai- 400 014.

3. Shantikumar Chintamani
Mohandas of Raigad, Indian
Inhabitant, residing at
Mukhrichi Ganpati Gally,
Tekalkar Ali, Post. Chawl,
Taluka: Alibag, Dist. Raigad

4. Vijaykumar Chintamani Mohandas
of Mumbai, Indian Inhabitant,
130, Khareghat Road,Opp: King
George High School, Hindu Colony,
Dadar, Mumbai-400014.

5. Shivhar Ganpat Shroff
of Mumbai, Indian Inhabitant
R/at Hindu Colony, Plot No.168-B,
Dadar, Mumbai- 400014.

6. Sandip Prafulkumar Mohandas

7. Sumati Prafulkumar Mohandas
both of Mumbai, Indian Inhabitant
residing at Plot No.130,
Khareghat, Opp: King George High
School, Hindu Colony, Dadar,
Mumbai- 400 014. ..Respondents
(Orig.Defendant Nos.2 to 7)

Mr. A.Y.Sakhare Senior Counsel with Smt.Lalita Panchakshari, advs. for the Appellant.

Mr.C.N.Chavan, adv. for the Respondent No.1,4,6 and 7.

WITH
APPEAL NO.75 OF 2002
IN
TESTAMENTARY SUIT NO.40 OF 1998
IN
TESTAMENTARY PETITION NO.974 OF 1997

Maheshkumar Chintamani Mohandas
Indian Inhabitant,
Residing at Reodanda Post-Chawl,
Taluka-Alibag, District-Raigad ..Appellant
(Orig.Defendant No.1)

V/s.

1. Shri Prafulkumar Chintamani Mohandas, of Mumbai, Indian Inhabitant, R/at Praful Bhavan, Plot No.130, Khareghat Road, Hindu Colony, Dadar, Mumbai-400 014. ...Respondent
(Orig.Plaintiff)

2. Mrs.Hemlata @ Kanaklata Shivhar Shroff, Plot No.168/B, IInd floor, Hindu Colony, Dadar, Mumbai- 400 014.

3. Shantikumar Chintamani Mohandas of Raigad, Indian Inhabitant, residing at Mukhrichi Ganpati Gally, Tekalkar Ali, Post. Chawl, Taluka: Alibag, Dist. Raigad ...Respondents.
(Orig.Defendant Nos.2 & 3)

Mr. A.Y.Sakhare Senior Counsel with Smt.Lalita Panchakshari, advs. for the Appellant.

Mr.C.N.Chavan, adv. for the Respondent No.1.

CORAM: D.K.DESHMUKH &
J.H. BHATIA, JJ.
DATED: 16th October, 2007.

JUDGMENT: (Per J.H.Bhatia, J.)

1. All these three appeals may be disposed off by this common judgment as all the three appeals arise out of common judgment, delivered by the learned Single Judge of this Court, which has been challenged in these appeals. The learned Single Judge had granted a probate in testamentary suit no.40 of 1998 in testamentary petition no.974 of 1997 in favour of the plaintiff/petitioner Praful Kumar and had dismissed suit no.3761 of 1997 for partition filed by the present appellant Hemlata. For the sake of convenience, the petitioner/plaintiff may be addressed as plaintiff in the present judgment while the respondents may be referred to as defendants.

2. To state in brief, the plaintiff Prafulkumar filed a petition seeking probate of the will allegedly executed by his mother Leelavati on 12-3-1997 appointing him as an executor of will. As the defendants had filed a caveat challenging the said will, testamentary suit no.40 of 1998 came to be registered. Defendant Hemlata also filed a suit for partition of the property left behind by mother Leelavati. The facts, which are no more in dispute may be set out in brief. One Yashwant Rele was father of Leelavati. He had executed a will on 22nd June, 1965. He died on 15-8-1967 and probate of

the said will was granted in probate petition no.799 of 1967 on 7th May, 1970 and her son Shanti Kumar, grand daughter Hemlata and Shivhar Shroff were appointed as an executors. The said property was bequeathed to his grandsons Shanti Kumar, Ganesh Kumar and grand daughter Hemlata. He had provided in the will that his daughter Lilavati will enjoy the property during her lifetime subject to certain directions and he provided that in case, she would die before himself, i.e., testator Yashwant Rele, the property would be distributed among the three grand children. Admittedly, Yashwant Rele died on 15-8-1967 and after his death during the lifetime of Lilavati, property was actually distributed among three legatees namely, Shanti Kumar, Ganesh Kumar and Hemlata. Ganesh Kumar was blind. He was unmarried and he died on 6-1-1997 leaving behind him only mother Lilavati, four brothers and a sister. The dispute in the present matter pertains to immovable property, which was bequeathed to Ganesh Kumar and some movable property. It is the case of the plaintiff/petitioner Praful Kumar that on 12-3-1997 Lilavati executed a will bequeathing said moveable and immovable property in favour of his wife and son and he himself was appointed as executor. On 3/5/1997 Lilavati died.

3. According to the contesting defendants namely,

Hemlata, Shanti Kumar and Mahesh Kumar, Lilavati had not made any will. The alleged will is a forged document. Praful Kumar, who is the propounder and also the beneficiary of the same, had himself taken active part in preparation of the alleged will. One of the attesting witnesses, namely Girish Sao is his son-in-law and another attesting witness Deolekar, advocate is personal friend of Praful Kumar. It is contended by them that the will is liable to be rejected and the petitioner is not entitled to get a probate of the same. According to them, after death of Ganesh Kumar, Lilavati had become exclusive owner of the said property and after death of Lilavati, movable and immovable property left behind her would go to her four sons and a daughter equally. On these grounds, Hemlata sought partition and separate possession by filing a suit.

4. Several issues were framed by the learned Single Judge on behalf of the petitioner. In all four witnesses were examined including both the attesting witnesses and Dr.Mokashi, who had attended Lilavati and certified that she was physically and mentally fit and in disposing condition while executing the will. On behalf of the defendants, only Hemlata was examined. Taking into consideration the evidence on record and overall circumstances, the learned Single Judge accepted

the contention of the petitioner that the deceased Lilavati had actually executed a will and accordingly, the petition came to be allowed with the direction to grant probate of the will. As a consequence, the suit filed by Hemlata for partition of the property came to be dismissed.

5. Mahesh Kumar filed one appeal against dismissal of the suit for partition and another appeal against grant of probate. Hemlata filed an appeal challenging the judgment in respect of the will as well as the dismissal of the suit for partition. The learned counsel for the defendant/appellants vehemently contended that the learned Single Judge has not properly appreciated the evidence while granting the probate. He particularly contended that the whole of the property in the hands of the deceased Lilavati goes to the wife and son of the plaintiff/petitioner Praful Kumar with whom she was living. It is contended that as one of the attesting witnesses is son-in-law and another attesting witness is a close friend of the petitioner and the petitioner himself had taken active part in preparation of the will. According to him, this itself is suspicious circumstance sufficient to discard the will. It is contended that there could be no reason for Lilavati to exclude her other children and

grand-children from the property.

6. On the other hand, the learned counsel for the petitioner strongly supported the judgment and reasons given by the learned Single Judge while granting probate. It is contended that Lilavati died at the age of about 87 years. She was living with her son Praful Kumar and he alone was looking after her properly. He was also taking care of his two blind brothers namely, Ganesh Kumar and Vijay Kumar. Vijay Kumar is still living with the petitioner and has supported the petitioner in this matter and he does not claim any share in the property because he has been maintained by Praful Kumar. It is contended that Shanti Kumar, Mahesh Kumar and Hemlata never took care of their mother, but they are interested only in taking share in her property. They had actually quarrelled on 12th day ceremony after the death of Ganesh Kumar for division of the property and this was not liked by their mother. In these circumstances, she decided to bequeath the whole of the property in favour of the petitioner/plaintiff and had actually bequeathed the same in favour of his son and wife.

7. Perused the record and proceeding. As noted above, the petitioner Praful Kumar examined himself and

three other witnesses, being Advocate Deolekar, Doctor Mokashi and Girish Sao. Advocate Deolekar and Girish are the attesting witnesses. Dr.Mokashi deposed that he was called to examine and certify whether Lilavati was fit and in sound state of mind to execute a will. According to him, she admitted that she was aware about the contents of the will and he also certified that she was in sound state of mind and she had put signature on the will in his presence. Evidence of the petitioner shows that after quarrel, which was raised by the defendants on 12th day after the death of Ganesh Kumar for partition of the property, their mother was annoyed and, therefore, she had decided to bequeath property to him. She gave instructions to him get a will prepared. Accordingly, he approached advocate Deolekar and got the draft of the will prepared as per the said instructions. Evidence of Advocate Deolekar shows that he read over the will and explained the contents. Lilavati admitted that it was according to her instructions and thereafter, she put her signatures. Girish Sao also supported it. The evidence on record shows that she had actually understood the contents of the will before putting her signature on the same. It is true that Girish is son-in-law of the petitioner and Deolekar advocate is also his friend but that itself can be no ground to discard their evidence. As far as Dr.Mokashi

is concerned, his evidence shows that twice before execution of the will, he was called to examine and treat her during a period of about 2-3 years. It appears that Advocate Deolekar and Doctor Mokashi are the residents of the same locality. Doctor Mokashi had no reason to make false statement or to falsely certify that Lilavati was in sound state of mind and she had understood and signed the will.

8. It appears that before filing of this proceeding before the Court, notice was issued by Mahesh Kumar to the petitioner alleging that he had forged a will of mother and had obtained some thumb marks purporting to be of their mother while she could put signature. However, the will on record shows that it was signed in English. It does not bear any thumb marks. Though initially Hemlata tried to take a stand that the will does not bear signature of her mother, finally she admitted that the signature on the will is in English and her mother always used to sign in English. The learned trial Court minutely discussed the evidence and came to conclusion that the will bears the signature of the deceased Lilavati. Hemlata had initially pleaded that she had several documents bearing signatures of their mother but she did not produce any such documents for the purpose of comparison. The

learned Single Judge observed that due to non production of such documents inference can be drawn that if she would have produced documents, they would not support her contention that the will does not bear signature of her mother and her stand would have been falsified.

9. Admittedly, Lilavati had five sons and a daughter. Out of the five sons, two sons namely, Ganesh Kumar and Vijay Kumar were blind. She was living with Praful Kumar. Ganesh Kumar and Vijay Kumar were also living with the petitioner and he was properly maintaining them. Ganesh Kumar died while living with him and Vijay Kumar is still living with the petitioner. Vijay Kumar does not support the defendants. He has supported the petitioner in respect of the will. It is material to note that Shanti Kumar, Mahesh Kumar and Hemlata did not take any care for their mother. From admissions of Hemlata herself, it appears that once in a while and sometimes in a year, they used to pay visit to their mother, while the petitioner, his wife and children used to take care of Lilavati. The will of Lilavati also clearly shows that only the petitioner Praful Kumar, his wife and son had affectionately taken care of her and, therefore, she was inclined to bequeath her property in favour of the wife and the son of the petitioner. If the defendants did not take care of

their old mother and if she was being looked after only by one son and his family members, it was but natural for her to bequeath her property in favour of daughter-in-law and grand son, who were treating her affectionately and taking her care properly. It was also but natural for her not to give any share in the property to her other children, who never bothered to take care of her. There is clear admission on record that on 12th day after the death of Ganesh Kumar, quarrel was raised by the defendants for partition of the property of Ganesh Kumar. It appears that due to this conduct of the defendants, their mother was annoyed. Infact, Ganesh Kumar was a exclusive owner of the property on the basis of will of grandfather Yashwant Rele. As he was not married and he died issueless. As per the provisions of Section 8 read with Schedule I of the Hindu Succession Act, 1956, mother is the Class I heir and brothers and sisters fall in Entry No.2 of Class II heirs. Lilavati being mother was the only legal heir of Class I after the death of Ganesh Kumar. It is nobody’s case that Ganesh Kumar had made any will bequeathing the property to anybody. As he died intestate, his mother succeeded him and became absolute owner of the property. She was entitled to take a decision about the disposal of the property. Even though brothers and sisters could not claim any

right in the property of Ganesh Kumar, the defendants raised quarrel and that too on 12th day ceremony after the death of Ganesh Kumar. It appears that in view of the conduct and behaviour of and neglect by the defendants, Lilavati decided to disinherit the defendants from the said property.

10. In view of the evidence pointed out above, there were strong reasons for Lilavati to bequeath the property in favour of the petitioner or his wife and son. It could not be expected from Lilavati or from the petitioner to call some persons, who were totally unknown to them for the purpose of attestation of the will. Therefore, in our considered opinion merely because attesting witnesses happen to be close friend and relative of the petitioner, their evidence can not be discarded. In our opinion, their evidence is reliable and trustworthy. The learned Single Judge has minutely considered their evidence and the circumstances, before coming to conclusion that the will was infact executed by the deceased Lilavati. We see no reasons to take a different view. In our opinion, there is no substance in the contention of the defendants/appellants.

11. In the result, all the three appeals stand

dismissed with costs to be paid by the appellants to the defendant/respondent Praful Kumar.

(D.K.Deshmukh, J.)

(J.H.Bhatia, J.)